

REMARKS

Reconsideration and further examination of this application is hereby requested. Claims 1-162 are currently pending in the application. Claims 141-143 and 156-162 have been withdrawn from consideration as being directed to the non-elected inventions.

A. Allowable Subject Matter

Applicant appreciates the Examiner's indication that claims 25-27, 42, 43, 54, 80, 81, 88, 97, and 126 recite allowable subject matter. Claims 25-27, 42, 43, 54, 80, 81, 88, 97, and 126 have all been amended to be in independent form. Additionally, dependent claims 39-41, 44, 47, 49, 62-78, 82-87, and 154 have been amended such that claims 39-41, 44-53, 55-79, 82-87, 147, 148, and 154 now depend from newly independent claim 42. Accordingly, Applicant respectfully submits that claims 25-27, 39-88, 97, 126, 147, 148, and 154 are now in condition for allowance.

B. The Anticipation Rejection

Claims 1, 2, 5, 6, 9, 17-20, 28-39, 41, 44, 45, 47-49, 53, 55, 56, 61, 69-73, 76, 78, 83, 85-87, 89, 90, 92, 96, 98, 99, 104, 112-116, 118, 120, 123-125, 127-133, and 135-140 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Nilsen* (US 5987306). Independent claims 1, 38, 89, 127-130, and 137-140 have all been amended to recite additional limitations that more specifically define embodiments of the present invention. The anticipation is respectfully traversed, based on those amendments and the following arguments.

In order for a claim to be anticipated, each and every limitation recited in the claim must be disclosed (either explicitly or inherently) within the four corners of a single prior art reference.

That is the law of anticipation.

Independent claim 1 (as amended) recites the limitation of

sending to the first node command information related to data quality of
service measurements for at least one of the communications path and the
second node

at lines 5-7. The preamble of claim 1 establishes that the communication path is between a first node on a wireless network and a second node on a data network. Independent claims 38, 89, 127, 128, 129, 130, 137, 138, 139, and 140 (as amended) all recite similar limitations.

This limitation is not disclosed by the *Nilsen* reference. *Nilsen* discloses testing performance parameters of a cellular mobile network from a mobile test unit (MTU). *See*, col. 12, line 22 through col. 13, line 20. The parameters measured relate to the quality of service performance of the cellular mobile network in selected geographic areas. *See*, col. 18, lines 32-45. *Nilsen* does not teach measuring quality of service parameters in a communication path between a node in a wireless network and a node in a data network, and/or for the node in the data network. The teachings of *Nilsen* do not go beyond testing of a single cellular mobile network.

Additionally, it is noted that claims 39, 41, 44, 45, 47-49, 53, 55, 56, 61, 69-73, 76, 78, 83, and 85-87 all now depend from allowable claim 42.

For the above reasons, Applicant respectfully requests that the Examiner carefully reconsider and withdraw the anticipation rejection of claims 1, 2, 5, 6, 9, 17-20, 28-39, 41, 44, 45, 47-49, 53, 55, 56, 61, 69-73, 76, 78, 83, 85-87, 89, 90, 92, 96, 98, 99, 104, 112-116, 118, 120, 123-125, 127-133, and 135-140.

C. The Obviousness Rejections

Claims 3, 7, 10, 12-16, 21-24, 50, 51, 57-60, 62, 64-68, 79, 93, 94, 100-103, 105, 107-111, 121, and 144-155 have been rejected under 35 U.S.C. § 103(a) as being obvious over the *Nilsen* reference alone. Claims 4, 8, 77, and 119 have been rejected under 35 U.S.C. § 103(a) as being obvious over the *Nilsen* in view of *Kikinis* (US 2002/0015398). Claims 11, 63, and 106 have been rejected under 35 U.S.C. § 103(a) as being obvious over the *Nilsen* in view of *Rahman* (US 6445916). Claims 75 and 117 have been rejected under 35 U.S.C. § 103(a) as being obvious over the *Nilsen* in view of *Barringer* (US 5675371). Claims 40, 52, 74, 82, 84, 95, 122, and 134 have been rejected under 35 U.S.C. § 103(a) as being obvious over the *Nilsen* in view of *Sant* (US 6169896). Claims 46 and 91 have been rejected under 35 U.S.C. § 103(a) as being obvious over the *Nilsen* in view of *Gulledge* (US 5644623). Independent claims 1, 38, 89, 127-130, and 137-140 have all been amended to recite additional limitations that more specifically define embodiments of the present invention. The obviousness rejections are all respectfully traversed, based on those amendments and the following arguments.

In order for a patent claim to be obvious, the prior art must disclose or fairly teach each and every limitation recited in the claims. That is because the claim must be considered as a whole. It may not be distilled down to a "gist."

As noted above concerning the anticipation rejection, independent claim 1 (as amended) recites the limitation of

sending to the first node command information related to data quality of service measurements for at least one of the communications path and the second node

at lines 5-7. The preamble of claim 1 establishes that the digital communication path is between a first node on a wireless network and a second node on a data network. Also as mentioned above concerning the anticipation rejection, independent claims 38, 89, 127, 128, 129, 130, 137, 138, 139, and 140 (as amended) all recite similar limitations to that of claim 1, which is recited as an example.

When the *Nilsen*, *Kikinis*, *Rahman*, *Barringer*, *Sant*, and *Gulledge* references are considered together they do not teach or fairly suggest measuring quality of service parameters in a communication path between a node in a wireless network and a node in a data network, and/or for the node in the data network. *Nilsen* is directed only to testing of performance in a mobile network, not of a path between two networks. Although *Nilsen* does make passing mention of a combination of analog and digital (refer to col. 18, lines 41-45) mobile networks, there is no suggestion made concerning testing of paths between a wireless network and a data network. The same is true of *Rahman*. *Kikinis* is directed to a system that enables mobile telephony via a data network. *Kikinis* does not deal with interface of a wireless network with a data network. Rather, it overlays a wireless functionality onto a data network. The *Barringer* reference is not about network testing at all – it provides wireless telemetry via a cellular telephone network of power source status for cable television amplifiers. *Sant* is directed to comparison of voice call quality between plural wireless networks, but it does not address a communication path between a wireless network and a data network. *Gulledge* is directed to simple drive testing to determine service quality in a cellular telephone network.

Without providing a teaching or suggestion of this explicit limitation directed to a digital

communication path, the *Nilsen, Kikinis, Rahman, Barringer, Sant, and Gulledge* references do not establish a *prima facie* case of obviousness.

Additionally, it is noted that claims 40, 46, 50-52, 57-60, 62-68, 74, 75, 77, 79, 82, and 84 all now depend from allowable claim 42.

For the above reasons, Applicant respectfully requests that the Examiner carefully reconsider and withdraw the obviousness rejections of claims 3, 4, 7, 8, 10-16, 21-24, 40, 46, 50-52, 57-60, 62-68, 74, 75, 77, 79, 82, 84, 91, 93-95, 100-103, 105-111, 117, 119, 121, 122, 134, and 144-155.

Concerning the limitations about measurements in connection with circuit switched data, SMS messages, wireless Internet access, wireless Internet transactions, e-commerce transactions, or push data, the Examiner has posited that since it is known that such measurements can be made that they must therefore be obvious choices within the level of ordinary skill in the art. (Refer to claims 10, 12-16, 62, 64-68, 105, and 107-111 However, this is a legal fallacy. Simply because it is know how to do something does not *per se* make it obvious to implement the measurements in any context. The Examiner has not addressed how the prior art would teach or fairly suggest how these limitations in combination with the measurement of data quality of service of a communications path between a node in a wireless network and a node of a data network. As discussed above, the *Nilsen, Kikinis, Rahman, Barringer, Sant, and Gulledge* references are not sufficient to address this combination.

For these additional reasons, Applicant respectfully submits that the claims define over the prior art of record.

D. Closing

In view of the above, Applicant respectfully submits that independent claims 1, 25-27, 38, 42, 54, 80, 81, 88, 89, 97, 126-130, and 137-140 are patentable over the prior art of record. Applicant further submits that dependent claims 2-24, 28-37, 39-41, 43-53, 55-79, 82-87, 90-96, 98-125, 131-136, and 144-155 are patentable, at least as being dependent from patentable independent claims, and are further patentable due to the additional limitations recited therein.

For the above reasons, Applicant respectfully submits that the application is in condition for allowance. If there remain any issues that may be disposed of via a telephonic interview, the Examiner is kindly invited to contact the undersigned at the telephone number given below.

The Director of the U.S. Patent & Trademark Office is authorized to charge any necessary fees, and conversely, deposit any credit balance, to Deposit Account No. 18-1579.

Respectfully submitted,

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